

APPEAL NO. 022665
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 24, 2002. The hearing officer determined that the respondent (claimant herein) was entitled to temporary income benefits (TIBs) from October 24 through November 19, 2001. The appellant (carrier herein) files a request for review contending that it did not stipulate to venue and that the hearing officer erred in finding that the claimant had good cause for not attending a required medical examination (RME) when he was incarcerated on the date of the RME. There is no response from the claimant in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

As far as venue is concerned the carrier contends that it did not stipulate that venue was proper in the (City 1) field office of the Texas Workers' Compensation Commission (Commission) as was stated in the hearing officer's decision. However, the record clearly reflects that both parties stipulated that the claimant lived within 75 miles of the Commission's City 1 field office on the date of injury. This stipulation meant that venue was proper in the City 1 field office. See Section 410.005(a).

As far as the merits of the cause are concerned, the key question before us is whether the hearing officer erred as a matter of law in finding that the claimant had good cause not to attend an appointment with the carrier's RME doctor. It was undisputed that the claimant was incarcerated after this appointment was scheduled but prior to the date of the scheduled appointment, and remained incarcerated on the date of the appointment. After the claimant was released from incarceration, a second appointment was scheduled with the RME doctor, which the claimant attended. The period of disability found by the hearing officer was the period of time after the claimant was released from incarceration and had returned to his treating doctor, and prior to the date of the second appointment with the RME doctor.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §126.6(h) (Rule 126.6(h)) provides as follows:

A carrier may suspend [TIBs] if an employee, without good cause, fails to attend an RME.

The carrier argues that the hearing officer erred by finding that the claimant had good cause for not attending the original RME appointment, contending that incarceration could not be the basis for good cause for failing to attend an RME appointment. We

find no basis in logic or law that supports the carrier's position in this regard. We find no abuse of discretion by the hearing officer in finding good cause under these facts.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**MR. GARY SUDOL
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge